

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jeannette M. Pahl,

Complainant,

**ORDER OF DISMISSAL**

vs.

Kuchen Meyer,

Respondent.

On November 18, 2008, Jeannette Pahl filed a Complaint with the Office of Administrative Hearings alleging Respondent violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material concerning the November 2008 City of Afton mayoral election.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 18, 2008, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent to each Respondent by United States mail on November 18, 2008.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not support a *prima facie* violation of Minn. Stat. § 211B.06.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

That the Complaint filed by Jeannette Pahl against Respondent Kuchen Meyer is DISMISSED.

Dated: November 19, 2008

s/Eric L. Lipman

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ERIC L. LIPMAN  
Administrative Law Judge

## NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## MEMORANDUM

The Complaint alleges that in October of 2008, Respondent Kuchen was a write-in candidate for Mayor of the City of Afton, Minnesota. The Complaint further alleges that Meyer prepared and disseminated a campaign flyer to the residents of Afton that contained false campaign material regarding herself and candidates for election to Afton's city council. Ms. Meyer ran unsuccessfully as a write-in candidate for Mayor of Afton in the November 2008 election.

The Complaint contends that the following claims in the Kuchen flyer are false:

[I] never voted to use eminent domain nor has any Afton City Council.

....

After all the unnecessary and frivolous expenditures were cut from the budget we created a nearly \$300,000 budget reserve.... And now, according to Nick Mucciacciaro the current council majority has spent that down to \$60,000 in 2 years!

As the Complainant, Ms. Pahl, reasons, the statements are false because: (1) during Ms. Kuchen's tenure on the Afton City Council, Kuchen voted in favor of "direct[ing] that the City Move Forward with the Procedures of Eminent Domain as Necessary;"<sup>1</sup> and (2) the current budget reserve for the City of Afton is \$302,757.

No averment is made that the Ms. Kuchen knew that the claims in her flyer were false when she circulated them or that Kuchen circulated her statements with reckless disregard as to their falsity.

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

... [i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or

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<sup>1</sup> See, Complaint, Attachment No. 1 (Minutes of Afton City Council Meeting, December 20, 2005).

defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

In order to be found to have violated this section, a person must intentionally participate in the preparation, dissemination or broadcast of false campaign material that the person knows is false or communicates with reckless disregard of whether it is false. As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of specific facts.<sup>2</sup>

The statute does not bar criticism that is merely unfair or unjust.<sup>3</sup> The statute is not intended to prevent criticism of candidates for office, or to prevent unfavorable deductions or inferences from a candidate's conduct; even if those conclusions might be misleading or incomplete.<sup>4</sup> Likewise, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.<sup>5</sup>

With respect to the allegation regarding Kuchen's voting record, Ms. Pahl has not set forth sufficient facts to state a violation of Minn. Stat. § 211B.06. Kuchen claims in the flyer that she never voted in favor of the City *using* its eminent domain powers – not that she likewise opposed the City's preparations for a future use of this power. Indeed, as the Minutes furnished as an attachment to the Complaint make clear, the direction to City Staff to "*proceed* with a petition for eminent domain" was not approved at the City Council meeting cited by Ms. Pahl.<sup>6</sup> The mere assertion that Kuchen's claim is incomplete, or should not be believed because of other facts, falls short of the standard of liability under Minn. Stat. § 211B.06.

With respect to the allegation regarding the amount of the City reserves, Ms. Pahl has not set forth sufficient facts to state a violation of Minn. Stat. § 211B.06. Ms. Kuchen asserted in her flyer that "*according to Nick Mucciacciaro*, the current council majority has spent that down to \$60,000 in 2 years."<sup>7</sup> Read in context, this claim is demonstrably true – Mr. Mucciacciaro has made such an assertion. Ms. Pahl, in her

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<sup>2</sup> See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

<sup>3</sup> *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (statements which "told only one side of the story," or were merely "unfair" or "unjust," without being demonstrably false, are not prohibited by the Fair Campaign Practices Act.)

<sup>4</sup> *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981).

<sup>5</sup> *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986) (*citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974)). See also, *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); ; *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990).

<sup>6</sup> See, Complaint, Attachment No. 1, Item G (Minutes of Afton City Council Meeting, December 20, 2005) (emphasis added).

<sup>7</sup> See, Complaint, at 3 (emphasis added).

contemporaneous and parallel filing with this Office, has furnished the “State of the City” letter in which Mr. Mucciacciaro makes the claim that the city’s budget reserve “has been spent down to where it stands at only \$60,000.”<sup>8</sup> For her part, Ms. Kuchen cited the source for her statement on the budget reserve, equipping Afton’s voters with information needed to adjudge the reliability of such a statement.

Significantly, as to both claims, Pahl does not allege that Kuchen knew that either of the contested claims were false when they were circulated or that Kuchen circulated these statements with reckless disregard as to their falsity.

For these reasons, Ms. Pahl’s Complaint fails to set forth a violation of the Fair Campaign Practices Act. Accordingly, this matter must be dismissed.

**E. L. L.**

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<sup>8</sup> See, *Pahl v. Mucciacciaro*, OAH Docket No. 8-6381-20067-CV (2008).